

Issue 6 Remote Terminal collocation

- (a) What are the appropriate terms and conditions for Remote Terminal Collocation?
- (b) What are the appropriate recurring and nonrecurring charges for remote terminal collocation?

The Commission approves the resolution of these issues contained in the Settlement Agreement.

Issue 7 Operations Support Systems

- (a) What pre-ordering and ordering functionalities must BellSouth make available to CLECs to support CLECs' ordering of xDSL loops for line sharing, line splitting and standalone xDSL, in what form must BellSouth make such functionalities available, and by when must BellSouth make such functionalities available?
- (b) Should BellSouth be required to make available to CLECs an integrated pre-ordering and ordering electronic interface OSS, and if so by what date?

The Commission approves the resolution of these issues contained in the Settlement Agreement.

- (c) What are the appropriate OSS charges, if any?

The Data Coalition argues that charges for mechanized loop makeup should be set at zero. However, it urges the Commission to modify BellSouth's proposed charges should the Commission allow BellSouth to impose manual loop makeup charges on CLECs. The Data Coalition again argues that BellSouth's proposed charges are inflated. In this instance, the Data Coalition states that BellSouth's assumptions for the percentage of the loops for which a makeup is requested will not be found in LFACS is greater than admitted in the testimony of BellSouth's own witness. (Data Coalition Post-Hearing Brief, p.84). In addition, the Data Coalition states that the evidence demonstrates that it is not a major imposition to locate information that cannot be found in BellSouth's LFACS database. *Id.*

The Commission finds it appropriate to assess OSS charges on a recurring basis. This enables CLECs to be charged for access to OSS at the volumes that they are using OSS and a reasonable recurring rate. After reviewing the evidence in this case, the Commission finds the following OSS charges comply with TELRIC principles and shall be the permanent OSS rates.

<u>Recurring</u>	
Mechanized Loop Qualification	
OSS Per first 1,000 MLQs	\$100
OSS Next 1000 MLQs	\$50

SI with LMU w/o Facility Reservation Number	\$35
SI with LMU w Facility Reservation Number	\$45

Issue 8 What are the appropriate terms and conditions for line splitting?

The Settlement Agreement included a proposed resolution for this issue. The Commission adopts a modified version of this resolution. The Settlement Agreement sets forth a number of circumstances in which BellSouth will continue to own the splitter in a line splitting situation. These situations include:

when a line sharing arrangement is in place such that a customer receives voice service from BellSouth and xDSL service from a DLEC, and the DLEC leases a BellSouth owned splitter, if the customer switches voice service from BellSouth to another CLEC, the DLEC may continue to lease the BellSouth owned-splitter to provide xDSL service and the CLEC may lease the unbundled network elements necessary to provide voice service.

(Settlement Agreement, p. 7).

The Commission finds that in addition to the above circumstances, it is appropriate for BellSouth to continue to own the splitter when the DLEC wants to serve a new customer with voice and xDSL service.

The Settlement Agreement states that "the applicable recurring charges to be paid by the CLEC for this line splitting arrangement will be the recurring rates for the loop and port established by the Georgia Commission in Docket 10692-U and the two cross connects established by the Commission in Docket 7061-U." (Settlement Agreement, p. 7). The applicable recurring charges to be paid by the CLEC for this linesplitting arrangement will be the recurring rates for the loop and port established by the Georgia Commission in Docket No. 10692-U and the two cross connects established by the Commission in Docket No. 7061-U. For nonrecurring charges to be paid by the CLEC for line splitting, the Settlement Agreement proposes to apply the rate for the loop-port combination (switch as is) established by the Commission in Docket No. 10692-U. *Id.* The Commission finds that the application of this rate is reasonable.

The Commission hereby orders BellSouth to file an OSS implementation schedule for line splitting within two months after issuance of this Order. The implementation of the OSS shall be within six (6) months after the issuance of this order. This is intended to address the unique situation presented with line splitting and shall in no way be construed as precedent setting. It remains the Commission's position that OSS related matters are most appropriately handled through the Change Control Process.

III. INTERIM RATES

Unless specifically noted above, the interim rates set forth in this Order are not subject to true-up. These interim rates are effective as of the date of this Order and shall remain in effect for a period of 18 months from the date of this Order, at which time they will be replaced with permanent rates established in the upcoming generic UNE pricing docket.

IV. TIME AND MOTION STUDIES

BellSouth shall file the required time and motion 90 (ninety) days after this Order. When these studies are filed, BellSouth shall include a narrative description of the scope of the time and motion studies, the sampling methodology used, a description of all assumptions made and all work papers for Staff review.

V. ORDERING PARAGRAPHS

This Commission finds and concludes the rates, terms and conditions set forth above are reasonable and appropriate and should be adopted pursuant to Georgia's Telecommunications and Competition Development Act of 1995 and Sections 251 and 252 of the Telecommunications Act of 1996.


WHEREFORE IT IS ORDERED, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.


ORDERED FURTHER, the rates, terms and conditions set forth in the body of this Order are adopted and BellSouth shall submit such compliance filings as are necessary to reflect and implement the standards and mechanism established by this Order.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of this Commission in Administrative Session on the 3rd day of April, 2001.


Reece McAlister
Executive Secretary


Lauren McDonald, Jr.
Chairman

Date: 6-11-01

Date: 06-11-01

Attachment I

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March 27, 2001

RECEIVED

MAR 27 2001

DELIVERED BY HAND

Mr. Reece McAlister
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EXECUTIVE SECRETARY
G.P.S.C.

Re: *Investigation of BellSouth Telecommunications, Inc.'s Provision of Unbundled
Network Elements for xDSL Service Providers; Docket No. 11900-U*

Dear Mr. McAlister:

Enclosed please find an original and nineteen (19) copies, as well as an electronic version, of a Settlement Agreement in the above-referenced docket between BellSouth Telecommunications, Inc. ("BellSouth") and Rhythms Links, Inc., Covad Communications Company, BlueStar Networks, Inc., and BroadSlate Networks of Georgia, Inc. DSLnet Communications, LLC has indicated that it does not oppose the settlement. Other parties are currently reviewing the agreement and may ultimately agree to sign. AT&T Communications of the Southern States, Inc. and Sprint Communications Company, L.P. are the only parties to date that have indicated opposition to the Settlement Agreement. I would appreciate your filing same and returning the four (4) extra copies stamped "filed" in the enclosed self-addressed and stamped envelopes.

Thank you for your attention to this matter.

Yours very truly,


Bennett L. Ross

BLR:nvd
Enclosures

cc: Leon Bowles (via hand delivery)
Parties of Record

219017

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

In re:)	
)	
Investigation of BellSouth Telecommunications,)	Docket No. 11900-U
Inc.'s Provision of Unbundled Network Elements)	
for xDSL Service Providers)	
_____)	

SETTLEMENT AGREEMENT

ISSUE 1: xDSL Loops

(a) Do any xDSL loops need to be designed?

BellSouth will offer both designed and nondesigned xDSL loops. Not later than March 31, 2001, BellSouth will provide a nondesigned xDSL loop (hereinafter referred to as "UCL-ND") that meets the following technical parameters:

The UCL-ND will be provisioned as a dedicated 2-wire metallic transmission facility from BellSouth's Main Distribution Frame to a customer's premises (including the NID). The UCL-ND will be a "dry copper" facility in that it will not have any intervening equipment such as load coils, repeaters, or digital access main lines ("DAMLs"), and may have up to 6,000 feet of bridged tap between the end user's premises and the serving wire center. The UCL-ND typically will be 1300 Ohms resistance and in most cases will not exceed 18,000 feet in length, although the UCL-ND will not have a specific length limitation. For loops less than 18,000 feet and with less than 1300 Ohms resistance, the loop will provide a voice grade transmission channel suitable for loop start signaling and the transport of analog voice grade signals. The UCL-ND will not be designed and will not be provisioned with either a design layout record or a test point.

Within ten (10) days, BellSouth agrees to provide contract language to competing local exchange carriers ("CLECs") interested in amending their interconnection agreement to include the UCL-ND offering so that these CLECs can order the UCL-ND when it becomes available on or before March 31, 2001. This amendment will include the technical parameters of the UCL-ND, including applicable references to TR 73600, and will reference a CLEC's ability to avail itself of BellSouth's Loop Make-Up ("LMU") process to obtain LMU information and to request Unbundled Loop Modification. This amendment also will make clear that for maintenance and repair purposes BellSouth is unable to perform remote testing on the UCL-ND when a trouble is reported because of the absence of a test point and, accordingly, CLECs ordering the UCL-ND agree to: (i) test and isolate trouble to the BellSouth portion of the UCL-ND before reporting a trouble to BellSouth; (ii) provide the results of such testing when reporting a trouble to BellSouth; and (iii) pay the costs of a

BellSouth dispatch if the CLEC reports a trouble on the UCL-ND and no trouble is found on BellSouth's portion of the UCL-ND.

The parties agree to negotiate the terms and conditions of joint acceptance testing for the UCL-ND. In the interim, BellSouth will perform continuity validation on UCL-ND loops which require a dispatch to provision prior to order completion. In addition, requesting carriers have the option to purchase Loop Testing (Cost Reference No. A.19), which shall be billed at the following rates in Georgia: Basic Per Half Hour - \$ 78.92; Overtime Per Half Hour - \$102.99; Premium Per Half Hour - \$ 127.04; Additional Basic Per Half Hour - \$ 23.33; Additional Overtime Per Half Hour - \$30.31; Additional Premium Per Half Hour - \$37.28. This agreement is contingent on a finding by the Georgia Commission that it has reviewed the rates for Loop Testing and has determined that such rates are just, reasonable, and fall within the range that the reasonable application of TELRIC principles would produce. Notwithstanding the foregoing, nothing in this agreement should imply that the CLECs agree that such rates are in fact TELRIC-based rates.

BellSouth will make available the Loop Testing rates set forth above on an interim basis in Alabama, Florida, Kentucky, Louisiana, Mississippi, North Carolina, and South Carolina. These interim rates will be trued-up retroactively when Loop Testing rates are established by the Alabama Commission in Docket 27821, the Kentucky Commission in Case No. 382, the Louisiana Commission in Docket U-24814(A), the Mississippi Commission in Docket 00-UA-999, the North Carolina Utilities Commission in Docket P-100, Sub 133d, and the South Carolina Commission in Docket 2001-65-C, respectively.

When BellSouth provisions a UCL-ND, BellSouth will take necessary steps to identify the pair as an xDSL compatible loop. As such, when making modifications to its network, BellSouth will maintain the same specified physical characteristics of the UCL-ND in accordance with TR 73600.

(b) What are the appropriate recurring and nonrecurring charges for the nondesigned xDSL loop to be offered by BellSouth?

Based upon the results of its cost study conducted consistent with the methodology adopted previously by the Georgia Commission, the parties agree to the following recurring and nonrecurring rates for the 2-wire UCL-ND: \$12.80 recurring; \$ 44.69 nonrecurring (first, with \$22.40 additional); disconnect \$25.65 (first, with \$7.06 additional). These rates are interim subject to retroactive true-up once the Commission establishes permanent rates for the UCL-ND in the generic cost docket that will be held later this year. The recurring rate for the UCL-ND will be deaveraged consistent with the methodology previously adopted by the Georgia Commission in Docket 7061-U. The rates set forth above do not include any costs associated with LMU information or Unbundled Loop Modification, which have separate rate elements. This agreement is contingent on a finding by the Georgia Commission that it has reviewed the rates for the UCL-ND and has determined that such rates are just, reasonable, and fall within the range that the reasonable application of TELRIC principles would produce. Notwithstanding the foregoing, nothing in this agreement should imply that the CLECs agree that such rates are in fact TELRIC-based rates.

BellSouth will make available the rates set forth above on an interim basis for the UCL-ND in Alabama, Florida, Kentucky, Louisiana, Mississippi, and South Carolina. These interim rates will be trued-up retroactively using as a surrogate the commission-approved recurring, nonrecurring, and disconnect rates (if applicable) for the SL-1 unbundled loop when established by the Alabama Commission in Docket 27821, the Kentucky Commission in Case No. 382, the Louisiana Commission in Docket U-24814(A), the Mississippi Commission in Docket 00-UA-999, and the South Carolina Commission in Docket 2001-65-C, respectively. BellSouth also will make available the UCL-ND in North Carolina and Tennessee using the state commission-approved recurring, nonrecurring, and disconnect rates (if applicable) for the SL-1 unbundled loop as a surrogate. In any given state, commission-approved SL-1 rates will cease to be used as a surrogate for the UCL-ND as soon as the public service commission in that state has been provided a cost study for the UCL-ND and expressly approved a rate for the UCL-ND.

(c) What are the appropriate recurring and nonrecurring charges for the xDSL loops currently offered by BellSouth (ADSL, HDSL, UCL - Short, and UCL-Long)?

The parties agree to use the ADSL and HDSL recurring rates established by the Georgia Commission in Docket 7061-U and BellSouth's proposed recurring rates for the UCL-Long and UCL-Short. These rates are as follows:

	Zone 1	Zone 2	Zone 3
2-wire ADSL Compatible Loop	\$ 11.23	\$ 12.97	\$ 20.62
2-wire HDSL Compatible Loop	7.88	9.09	14.46
4-wire HDSL Compatible Loop	10.39	12.00	19.07
2-wire UCL-Long	35.56	41.07	65.28
2-wire UCL-Short	12.02	13.88	22.07

This agreement is contingent on a finding by the Georgia Commission that it has reviewed the recurring rates for the UCL-Long and UCL-Short and has determined that such rates are just, reasonable, and fall within the range that the reasonable application of TELRIC principles would produce. Notwithstanding the foregoing, nothing in this agreement should imply that the CLECs agree that such rates are in fact TELRIC-based rates.

The parties have been unable to reach agreement on nonrecurring rates for the ADSL, HDSL, UCL-Long, or UCL-Short unbundled loops.

(d) What are the appropriate provisioning intervals for xDSL loops?

The parties agree to use the provisioning intervals for xDSL loops established by the Georgia Commission in Docket 7892-U, with the understanding that the Commission will examine these intervals as part of its regular review of the measurements, benchmarks, and analogs applicable to BellSouth's performance. Nothing herein shall preclude a party from seeking to arbitrate the issue of provisioning intervals in a Section 252 arbitration.

ISSUE 2: Two-Wire Universal Digital Channel Loops

The parties agree that the recurring rate for the UDC will be equal to the recurring rate for the ISDN unbundled loop established by the Georgia Commission in Docket 7061-U. These rates are interim subject to retroactive true-up once the Commission establishes a new recurring rate for the ISDN unbundled loop in the generic cost docket that will be held later this year. These rates are as follows:

	Zone 1	Zone 2	Zone 3
Universal Digital Channel	\$ 21.89	\$ 25.27	\$ 40.17

This agreement is contingent on a finding by the Georgia Commission that it has reviewed the rates for the UDC and has determined that such rates are just, reasonable, and fall within the range that the reasonable application of TELRIC principles would produce. Notwithstanding the foregoing, nothing in this agreement should imply that the CLECs agree that such rates are in fact TELRIC-based rates.

The parties have been unable to reach agreement on the nonrecurring rates for the UDC unbundled loop.

ISSUE 3: Digital Loop Carrier Issues

BellSouth agrees to comply fully with all existing Commission and FCC requirements concerning access to fiber-fed loops, including any additional requirements that the FCC may impose in connection with its Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (Jan. 19, 2001) ("*Line Sharing Reconsideration Order*")

With respect to the use of dual-purpose line cards in Next Generation Digital Loop Carrier ("NGDLC") systems, BellSouth has not deployed such functionality in its network in Georgia. Before any such deployment, BellSouth agrees to give the Georgia Commission and the parties in this docket not less than 90 (ninety) days advance notice. This would allow either the Commission or the parties to seek to convene a proceeding to determine what, if any, unbundling requirements should be imposed upon BellSouth in connection with the deployment of dual-purpose line card functionality.

ISSUE 4: Loop Deconditioning

The parties have been unable to reach agreement on the loop deconditioning issues.

ISSUE 5: Line Sharing

To resolve Issue 5(b) ("What splitter ownership options should BellSouth be required to offer"), the parties agree that BellSouth will offer the ILEC owned/ILEC maintained splitter ownership option. BellSouth also will offer the CLEC owned/CLEC maintained splitter ownership option no later than sixty (60) days after the successful completion of end-to-end testing of this option with a CLEC that provides its own splitter in collocation space in the Toco Hills central office in Atlanta, Georgia. BellSouth also will offer the CLEC owned/BellSouth maintained splitter ownership option no later than sixty (60) days after the successful completion of end-to-end testing of this option with a CLEC that provides its own virtually collocated splitter.

To resolve Issue 5(d) ("Should CLECs be able to obtain Splitter Capacity on a Port-by-Port basis"), the parties agree that BellSouth will offer CLECs the option of purchasing 8 ports at a time, in addition to the current 24 and 96 splitter port options.

To resolve Issue 5(e) ("How should BellSouth provide access to Line Sharing over fiber-fed loops"), BellSouth agrees to comply fully with all existing Commission and FCC requirements concerning providing access to line sharing over fiber-fed loops, including any additional requirements that the FCC may impose in connection with its *Line Sharing Reconsideration Order*. BellSouth also agrees to give the Georgia Commission and the parties in this docket not less than 90 (ninety) days advance notice of the deployment of the functionality necessary to make use of dual-purpose line cards in NGDLC systems in BellSouth's network in Georgia.

To resolve Issue 5(g) ("What are the appropriate intervals for provisioning splitters and collocation augments for line sharing"), the parties agree that BellSouth will provision splitters in 36 calendar days, provided that the CLEC submits a forecast three (3) months or more prior to the splitter order. BellSouth also will complete collocation augments for line sharing not later than 45 business days from receipt of a complete and accurate Bona Fide Firm Order, under the following circumstances: (i) the CLEC submits a forecast three (3) months or more prior to the application date; (ii) partially conditioned space is available in BellSouth's central office with no infrastructure space preparation work required (e.g., no changes to HVAC, cable racking, or power plant); (iii) completing the augment does not require a governmental license or permit; (iv) a standard space preparation fee applies; and (v) no changes have occurred to BellSouth's space or the CLEC's augment request between the date of the application response and BellSouth's receipt of the Bona Fide Firm Order.

To resolve Issue 5(h) ("What are the appropriate intervals for provisioning a line shared loop"), the parties agree to use the provisioning intervals for line sharing established by the Georgia Commission in Docket 7892-U, with the understanding that the Commission will examine these intervals as part of its regular review of the measurements, benchmarks, and analogs applicable to BellSouth's performance. Nothing herein shall preclude a party from seeking to arbitrate the issue of line sharing provisioning intervals in a Section 252 arbitration.

The parties have been unable to reach agreement on Issue 5(a) ("What is the method by which CLECs should be provided access for testing purposes in line sharing arrangements"), Issue

Issue 5(c) ("Where should the splitter be located in line sharing arrangements"), and Issue 5(f) ("What are the appropriate recurring and nonrecurring charges for line sharing").

ISSUE 6: Remote Terminal Collocation

(a) What are the appropriate terms and conditions for Remote Terminal Collocation?

The parties agree that BellSouth will provide requesting CLECs with the following information concerning BellSouth's remote terminals in Georgia: (i) the address of the remote terminal; (ii) the CLLI code of the remote terminal; (iii) the carrier serving area of the remote terminal; (iv) the designation of which remote terminals subtend a particular central office; and (v) the number and address of customers that are served by a particular remote terminal. BellSouth will provide this information on a first come, first served basis within thirty calendar days of a CLEC request subject to the following conditions: (i) the information will only be provided on a CD in the same format in which it appears in BellSouth's systems; (ii) the information will only be provided for each serving wire center designated by the CLEC, up to a maximum of thirty (30) wire centers per CLEC request per month and up to for a maximum of 120 wire centers total per month for all CLECs; and (iii) the requesting CLEC agrees to pay the costs incurred by BellSouth in providing the information.

(b) What are the appropriate recurring and nonrecurring charges for remote terminal collocation?

The parties agree to BellSouth's proposed recurring and nonrecurring rates for remote terminal collocation. This agreement is contingent on a finding by the Georgia Commission that it has reviewed these recurring and nonrecurring rates and has determined that such rates are just, reasonable, and fall within the range that the reasonable application of TELRIC principles would produce. Notwithstanding the foregoing, nothing in this agreement should imply that the CLECs agree that such rates are in fact TELRIC-based rates.

ISSUE 7: Operations Support Systems

The parties agree that all issues raised in this proceeding associated with the development of or modifications to BellSouth's OSS should be referred in the first instance to the Change Control Process ("CCP"). Nothing herein shall preclude a party from seeking to enforce its rights to OSS pursuant to the dispute resolution provisions of its interconnection agreement.

The parties have been unable to resolve the OSS rate issues.

ISSUE 8: Line Splitting

The parties agree that BellSouth will continue to own the splitter in a line splitting situation under the follow circumstances: when a line sharing arrangement is in place such that a customer receives voice service from BellSouth and xDSL service from a DLEC, and the DLEC leases a BellSouth owned splitter, if the customer switches voice service from BellSouth to another CLEC, the DLEC may continue to lease the BellSouth owned-splitter to provide xDSL service and the CLEC may lease the unbundled network elements necessary to provide voice service. The applicable recurring charges to be paid by the CLEC for this line splitting arrangement will be the recurring rates for the loop, the port, and two cross connects established by the Georgia Commission in Docket 7061-U. The applicable nonrecurring charges to be paid by the CLEC for this line splitting arrangement will be the nonrecurring rate for the loop-port combination (switch as is) established by the Georgia Commission in Docket 10692-U.

The parties agree that all other operational issues raised in this proceeding associated with line splitting should be referred to the Line Splitting Collaborative and that all issues raised in this proceeding associated with the development of or modifications to BellSouth's OSS to accommodate line splitting should be referred in the first instance to the CCP.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

BENNETT L. ROSS

Date: Mar. 27, 2001

CONSUMERS' UTILITY COUNSEL DIVISION

By: _____

Date: _____

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By: Kim Scadin / By BIR w/ permission

Date: Mar. 27, 2001

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By: Catherine Boone / By BIR w/ permission

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By: John Polack / R. BL w/ permission
Date: Mar. 27, 2001

NETWORK TELEPHONE CORPORATION

By: _____
Date: _____

MPOWER COMMUNICATIONS CORP.

By: _____
Date: _____

SOUTHEASTERN COMPETITIVE CARRIERS
ASSOCIATION

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WORLDCOM, INC.

By: _____
Date: _____

BIRCH TELECOM OF THE SOUTH, INC.

By: _____
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NETWORK ACCESS SOLUTIONS
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TRIVERGENT COMMUNICATIONS, INC.

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Date: _____

PARTIES OF RECORD
Docket No. 11900-U (xDSL)

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APPENDIX G

**Docket Number 13542-U, Generic Proceeding on
Point of Interconnection and Virtual FX Issues
Order**

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, JR., CHAIRMAN
ROBERT B. BAKER, JR.
DAVID L. BURGESS
BOB DURDEN
STAN WISE



RECEIVED

AUG 16 2001

EXECUTIVE SECRETARY
G.P.S.C.

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Docket No. 13542-U

#13542
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In Re: Generic Proceeding on Point of Interconnection and Virtual FX Issues

FINAL ORDER

BY THE COMMISSION:

The Georgia Public Service Commission ("Commission") initiated this docket to consider the following two issues: whether requesting carriers have the right to designate network point or points of interconnection at any technically feasible point and whether ILECs should be permitted to impose restrictions on a CLEC's ability to assign NPA/NXX codes to the CLEC's end-users.

I. INTRODUCTION

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A. Background

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In Docket No. 11901-U¹, the Commission voted to consider Issues 36 and 46 from that petition for arbitration in a generic proceeding. Issue 36 was presented in the petition for arbitration as follows:

Does [a CLEC], as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point?

Issue 46 involved the following dispute:

Should [an ILEC] be permitted to impose restrictions on [a CLEC's] ability to assign NPA/NXX codes to [its] end-users?

¹ Docket No. 11901-U, *Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.*

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Both of these issues arose as well in the context of other arbitration proceedings. For purposes of consistency and administrative efficiency, the Commission decided to initiate this generic proceeding to examine both issues.

The dispute on point of interconnection relates both to which party has the right to choose the point of interconnection and which party must pay for the transport of traffic to the CLEC's switch. Under the Federal Telecommunications Act of 1996 (Federal Act), ILECs must provide to requesting carriers interconnection at any technically feasible point within their network. 47 U.S.C. §251(c)(2)(B). The FCC interpreted this section as giving CLECs the right to choose the point or points of interconnection at which to exchange traffic with ILECs.² The FCC has further stated that the Federal Act allows a CLEC to interconnect at only one technically feasible point in each LATA.³ Calls from a BellSouth customer to a CLEC customer must travel through the CLEC's point of interconnection (POI). For example, a CLEC may choose to interconnect BellSouth Telecommunication Inc.'s ("BellSouth") Atlanta LATA at a single point by placing one switch in Atlanta. If a BellSouth customer in Columbus, Georgia places a call to a Columbus customer of this CLEC, then that call would still have to be transported to the CLEC's switch in Atlanta. The parties dispute who should bear financial responsibility for the transport of such a call.

The second issue involves an end user who has a phone number associated with a particular local calling area, even though the customer is physically located outside the local calling area. Calls from within a local calling area to end users outside the local calling area, but with phone numbers associated with the local calling area, are known as Virtual foreign exchange (FX) traffic. In dispute is whether reciprocal compensation is due for Virtual FX traffic.

B. Statement of Proceedings

On March 19, 2001, the Commission issued a Procedural and Scheduling Order ("Scheduling Order") in this proceeding. The Scheduling Order set the scope of the proceeding to include the two issues discussed above. Applications and petitions to intervene were filed by BellSouth, ITC^DeltaCom Communications, Inc., Level 3 Communications, LLC ("Level 3"), Sprint Communications Company L.P. ("Sprint"), Association of Communications Enterprises, AT&T Communications of the Southern States ("AT&T"), Global NAPs, Inc. ("Global Naps"), US LEC of Georgia, Inc. ("US LEC"), XO Georgia, Inc., Focal Communications Corp., ALLTEL Georgia, Inc., ALLTEL Georgia Communications Corp., Georgia ALLTEL Telecom, Inc., Georgia Telephone Corporation, Standard Telephone Company, BroadRiver Communication Corporation ("BroadRiver"), MCI WorldCom, Inc. ("WorldCom"). No party objected to any of the interventions filed with the Commission; however, on May 1, 2001, Level 3 withdrew its application to intervene.

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325 ¶ 172 (Released August 8, 1996) ("Local Competition Order").

³ *Application by SBC Communications Inc. et. al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order. ¶77 (released June 30, 2000). ("Texas 271 Order").

Pre-filed direct testimony was due on April 3, 2001. BellSouth, AT&T, Global Naps, BroadRiver, Sprint and WorldCom pre-filed direct testimony. These same parties filed rebuttal testimony on April 20, 2001. US LEC filed with the Commission on April 27, 2001, a letter stating that it supported the testimony of AT&T, Global Naps, BroadRiver and Sprint. Hearings took place before the Commission on May 1 and 2, 2001. Briefs were originally scheduled to be filed on May 25, 2001. The Commission extended this filing deadline to June 5, and then later to June 8, 2001. BellSouth, AT&T, Global Naps, BroadRiver, Sprint and WorldCom filed briefs with the Commission.

BroadRiver raised the issue of whether CLECs should have the right to define applicable homing arrangements for its own NPA/NXX codes. The Scheduling Order set forth two specific issues for consideration. The issue of a CLEC's right to define homing arrangements is outside the scope of this docket, and the Commission declines to address the issue in this proceeding.

C. Jurisdiction

Under the Federal Telecommunications Act of 1996, State Commissions are authorized to set rates and pricing policies for interconnection and access to unbundled elements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23.

II.

FINDINGS AND CONCLUSIONS

The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision. The Commission makes the following findings of fact, conclusions of law and statements of regulatory policy on the two issues set forth in the Commission's Scheduling Order:

Issue 1: Does [a CLEC], as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point?

A. Positions of the Parties

1. BellSouth

BellSouth does not contest a CLEC's right to select a single technically feasible point of interconnection for its originating traffic. BellSouth argues that a CLEC that chooses a switch outside the local calling area should bear the financial responsibility for the costs of hauling the local call outside of the local calling area in which it originated. (BellSouth Brief, p. 3). In

support of its position, BellSouth references the volume of traffic that it originates and delivers to CLECs. This traffic exceeded 49 billion minutes in 1999, and would require more than 5,500 DS3s to handle. *Id.* at 4. The considerable distance between local calling areas in the Atlanta LATA would increase the transporting costs for BellSouth. *Id.*

BellSouth contends that the Commission is not legally required to hold BellSouth financially responsible for the costs of hauling the traffic. The FCC has recently stated that it will examine the issue of who should pay to transport calls originated by an ILEC's customer to the CLEC's POI located outside the local calling area.⁴ As a compromise, BellSouth has offered to bear the cost of transporting its originating local traffic from one local calling area to a CLEC's POI in a different local calling area as long as the traffic volumes are less than a DS-3 level. (BellSouth Brief, p. 6).

2. AT&T

AT&T argues that FCC Rule 51.703(b) prohibits BellSouth from requiring CLECs to arrange for the transport for calls that originate on BellSouth's own network. In support of this argument, AT&T relies on *TSR Wireless, LLC, et. al., v. U.S. West*, File Nos. E-98-13, et al., FCC 00-194 (June 21, 2000) (appeal filed *sub nom, Qwest Corp. v. FCC*, Docket No. 00-1376 (D.C. Cir. Aug. 17, 2000) ("TSR Wireless"). In *TSR Wireless*, the FCC decided that ILECs should not charge paging carriers for the transport of ILEC originated traffic. ¶ 29. AT&T also cites a recent FCC decision that cautions an ILEC against reading the Texas 271 Order to change its reciprocal compensation obligations.⁵

AT&T argues that it is the more fair solution to require BellSouth to arrange for the transport of its own traffic to the CLEC's POI. AT&T's proposal is symmetrical since a CLEC must transport traffic on its network. By holding each party responsible for the design of its own network, the appropriate incentives exist to enhance efficiency and promote competition. (AT&T Brief, p. 24).

3. BroadRiver

BroadRiver's position is that "the originating carrier should possess the right to designate the POI for its originating traffic, provided that designation is limited to a point on the other carrier's existing, physical network at the time of the request." (BroadRiver Brief, p.3).

4. Global Naps

Global Naps cites the different interconnection obligations of CLECs and ILECs in the Federal Act as evidence that Congress recognized the need for regulatory assistance in promoting competition. (Global Naps Brief, p. 4). In addition to raising many of the same

⁴ Notice of Proposed Rulemaking, *In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, ¶¶ 114-115 (released April 27, 2001) ("Intercarrier Compensation NPRM").

⁵ AT&T Brief, p. 8, citing *Joint Application by SBC Communications Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order ¶ 235 (released January 22, 2001) (Kansas/Oklahoma 271 Order).

arguments raised by WorldCom and AT&T, Global Naps questions BellSouth's contention that the cost of transporting a call from a BellSouth customer to a CLEC POI outside the local calling area exceeds the amount that BellSouth recovers from the customer. First, Global Naps cites a portion of the TSR Wireless decision stating that the originating carrier recovers the costs of the facilities through the rates it charges its customers for making the calls. ¶ 34. Global Naps then references the Commission Order in Docket No. 5825-U, *Universal Access Fund, Transition to Phase II Pursuant to O.C.G.A. § 46-5-167*, that found that BellSouth's revenues from providing basic local exchange service exceed its cost of providing basic local exchange service by approximately \$219 million. (Global Naps Brief, p. 13). In addition, Global Naps argues that if the Commission allows BellSouth to charge a CLEC for any additional costs related to hauling its own traffic to a CLEC POI outside the local calling area, then the compensation to BellSouth should be limited to the difference between terminating facilities within and outside of the local calling area.

Global Naps also addresses the FCC's Intercarrier Compensation NPRM. The NPRM notes that the FCC rules currently hold the originating carrier financially responsible for hauling its traffic to the terminating carrier's POI. ¶ 70. Global Naps argues that the FCC inquired about switching to a bill-and-keep method in the context of exploring whether to change from the current obligation to pay reciprocal compensation. Thus, regardless of whether the FCC does switch to bill-and-keep, the Intercarrier Compensation NPRM clarifies that under its current rules, "if a CLEC chooses a point of interconnection outside a local calling area, the LEC is obligated to meet the CLEC there, and the CLEC is not required to locate in every local calling area or pay the ILEC transport or access charges if it does not. (Global Naps Brief, pp. 9-10).

5. *Sprint*

With two modifications, Sprint agrees with BellSouth's compromise proposal to transport its originating local traffic to a CLEC POI across local calling areas until the traffic reaches a DS3 level. The first modification is that the Commission affirm the CLEC's right to establish the initial POI for the mutual exchange of traffic. The second modification is that Sprint requests that a CLEC not be required to establish more than one POI within a local calling area. (Sprint Brief, p. 4).

6. *WorldCom*

WorldCom states that this issue involves two questions: (1) does a CLEC have the right to choose the POI for its own and BellSouth's originating traffic, and (2) is the CLEC obligated to arrange transport from a BellSouth local calling area to the POI, when the POI is located in another local calling area. WorldCom's position is that CLECs have the right to choose the POI, and that the CLEC is not obligated to transport BellSouth originating traffic. (WorldCom Brief, p. 1).

WorldCom argues that the FCC has ruled definitively that a CLEC has the right to choose the POI. In its Local Competition Order, the FCC stated that the Federal Act "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs."

customers in Columbus and an Atlanta POI. (Tr. 52). Based on the FCC rulings, a CLEC could choose to interconnect BellSouth's Atlanta LATA at a single point in Metropolitan Atlanta. If a BellSouth customer in Columbus were to call a Columbus customer of this CLEC, then the call would still need to be routed through the CLEC's Atlanta switch. While Columbus is in the Atlanta LATA, an Atlanta POI is outside of the Columbus local calling area. BellSouth has contended that additional costs related to providing dedicated interoffice transport are involved in hauling the traffic outside the local calling area. (Tr. 89). BellSouth has also contended that these additional costs are the result of the CLEC's decision to choose to interconnect at a single POI in the LATA. (Tr. 88-89).

Assuming a CLEC's choice to interconnect at a single point in the LATA resulted in greater transport costs than if the CLEC established a POI in each local calling area within the LATA, it still does not lead to the conclusion that the CLEC should bear the costs of transporting the traffic to the POI. To draw such a conclusion would be to argue that a CLEC should pay a price for taking advantage of its rights under the Federal Act as construed by the FCC. Stated in the converse, it is to argue that an ILEC should receive additional compensation for meeting its duty under the Federal Act. Presumably, Congress believed imposing upon ILECs the specific interconnection obligations would best accomplish the goals of the legislation. Shifting cost recovery from BellSouth to a CLEC simply because a CLEC took advantage of its rights under the Federal Act would undermine this Congressional intent. As AT&T stated in its Brief, "It is a hollow gesture to allow CLECs to designate a single point of interconnection and then require CLECs to pay the difference of the cost of that single point of interconnection and the cost of multiple points of interconnection in every BellSouth basic local calling area." (AT&T Brief, p. 23). The relevant inquiry is not whether transport costs would be less if a CLEC chose to establish additional POIs in each local calling area, but rather, whether an ILEC's duties extend to paying for the transport of local calls to a POI outside the local calling area.

FCC Rule 51.703(b) addresses who is responsible for the costs relating to traffic originating on a LEC's network.

A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

In TSR Wireless, the FCC explains that "[u]nder the[FCC]'s regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network." ¶ 34. The general rule then is that BellSouth is prohibited from charging CLECs for hauling traffic that originated on its own network to the CLEC's POI. In order to require CLECs to bear these costs, the specifics of what BellSouth is doing must fall outside of this general obligation.

Since the issuance of the Texas 271 Order, which stated that CLECs may choose to interconnect at a single point on the ILEC's network, the FCC issued the Kansas/Oklahoma 271 Order. In the Kansas/Oklahoma Order, the FCC explicitly stated that the Texas 271 Order did not "change an incumbent LEC's reciprocal compensation obligations under [the FCC's] current rules. For example, these rules preclude an incumbent LEC from charging carriers for local

traffic that originates on the incumbent LEC's network. " ¶ 238. Not only has the FCC not expressly altered an ILEC's reciprocal compensation responsibilities in the wake of its Texas 271 Order, but it has removed any potential ambiguity that the Texas 271 Order changed the prohibition on ILEC's charging carriers for local traffic that originates on its own network.

The obligation to pay for traffic originating on its own network applies, according to the terms of FCC Rule 51.703(b), to "local telecommunications traffic." If the calls in question fell outside the FCC Rule's definition of "local telecommunications traffic," then the obligation may not apply. FCC Rule 51.701(b)(1) defines "local telecommunications traffic" to mean "telecommunications traffic between a LEC and a telecommunications carrier . . . that originates and terminates within a local service area established by the state commission." In the hypothetical discussed earlier, where a BellSouth customer in Columbus calls a CLEC customer in Columbus, the call originates and terminates in the same local service area, regardless of whether it leaves the local service area to travel to the CLEC's POI. BellSouth still has the obligation to pay for the facilities to transport the call.

BellSouth makes the point that the Intercarrier Compensation NPRM is seeking comment on this issue. However, as stated above, this NPRM makes clear that the FCC rules currently require the originating carrier to bear the costs of hauling its traffic to the terminating carrier's POI. ¶ 70. If the FCC alters this responsibility through the rulemaking process, this Commission will take any and all necessary and appropriate action. The Commission finds that pursuant to the Federal Act, the FCC Rules and FCC Orders, BellSouth is responsible for the costs of transporting its originating traffic to the CLEC's POI.

Separate and apart from its legal analysis, the Commission finds that holding BellSouth financially responsible for transporting its originating traffic to a CLEC's POI is a sound policy. CLECs must bear financial responsibility for their originating traffic so requiring BellSouth to do the same does not place it at a disadvantage. The difference in volume between BellSouth and an individual CLEC does not affect the fairness of the resolution because BellSouth should be recovering the costs of its facilities through the rates it charges its customers. The Commission's determination on this issue is symmetrical, fair and consistent with the Federal Act's intent to promote competition. Of course, the Commission's decision does not prohibit individual CLEC's from agreeing to BellSouth's threshold proposal should BellSouth extend such an offer.

Issue 2: Should [an ILEC] be permitted to impose restrictions on [a CLEC's] ability to assign NPA/NXX codes to [its] end-users?

A. Positions of the Parties

1. BellSouth

BellSouth states four primary reasons in its Brief in support of its position that that reciprocal compensation is not due for Virtual FX traffic, and that BellSouth should be entitled to bill the CLECs access charges for these calls. First, BellSouth argues that the originating and terminating points of FX traffic are in different local calling areas. (BellSouth Brief, p. 10).